

CABAX MILLS

IBLA 77-238

Decided September 20, 1977

Appeal from decision of the Medford, Oregon, District Office, Bureau of Land Management, rejecting high bid on Chapman Creek timber sale, Tract 76-46.

Affirmed.

1. Materials Act--Timber Sales and Disposals

The Bureau of Land Management, under 43 CFR 5442.3, has the authority to reject bids submitted for timber sales where it rationally determines that rejection is in the Government's interest.

2. Rules of Practice: Hearings

A request for a hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

APPEARANCES: Jack B. Lively, Esq., Springfield, Oregon, for appellant; Donald P. Lawton, Esq., Office of the Solicitor, Portland, Oregon, for appellee.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Cabax Mills has appealed from a decision dated February 28, 1977, by the Medford, Oregon, District Manager, rejecting appellant's high bid on the Chapman Creek timber sale, offered for bidding on September 30, 1976.

The decision, supported by an affidavit of the State Director, explains that on December 9, 1975, a suit was filed in federal court (Arthur Downing Et Al. v. Kent Frizzell Et Al., Civil No. 75-1128, USDC, Oregon), to enjoin the 1976 fiscal year timber sale program

of the BLM Medford District on the ground that no environmental impact statement had been prepared. The parties agreed to settle the suit, and as one of the conditions for settlement, the Oregon State Director, BLM, agreed to withhold four specified timber sales including the Chapman Creek Tract until completion of an environmental impact statement. Accordingly, he directed the Medford District Manager to reject all bids on the pending Chapman Creek sale. The suit was subsequently dismissed on December 30, 1976.

Appellant contends that the withdrawal of the Chapman Creek sale was not in the Government's best interest and therefore contrary to 43 CFR 5442.3 which provides: "When the authorized officer determines it to be in the interest of the Government to do so, he may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement." Appellant points out that an environmental analysis report was prepared for the Chapman Creek sale. It cites several other timber sales within the Medford District for which such reports were filed and which were awarded during 1976. Appellant asserts that the withdrawal of the Chapman Creek sale as part of the basis for settlement of a lawsuit was a denial of due process, since other proposed sales, also named in the lawsuit, were let for bid and awarded. Appellant has also requested a hearing to present evidence on issues of fact concerning the decision of the District Office to withhold the sale.

Appellee essentially agrees with the facts as stated by appellant. It emphasizes, however, that bids on the Chapman Creek tract were rejected not because of any environmental problem, but to save the remainder of the District timber sale program from possible court injunction. Appellee asserts that the State Director, in withholding the Chapman Creek sale, was able to insure that most of the remainder of the timber sale program could proceed, thus providing industry with needed timber and avoiding an adverse economic impact on the local community.

[1] The issue presented is whether the withdrawal of the Chapman Creek sale was in the Government's interest so as to justify rejection of appellant's bid. The Act of July 31, 1947, as amended, 30 U.S.C. § 601 (1970), grants to the Secretary of the Interior the power to dispose of timber on the public lands where such disposal conforms to the public interest. 43 CFR 5442.3 gives the Secretary's authorized representatives broad discretion with respect to accepting or rejecting bids in timber sales. The record herein demonstrates to our satisfaction that the BLM's action in rejecting appellant's bid was not

contrary to either the public or the Government interest was well advised under the circumstances, and was in no way a denial of due process to appellant. The State Director's affidavit clearly shows that the settlement of the lawsuit, an element of which was the withdrawal of the Chapman Creek tract, among others, was done in furtherance, not derogation of the public and Government interests. Appellant was not singled out for harsh treatment, nor is it prevented from bidding on the tract in any future offers of sale. Moreover, the propriety of BLM action in withdrawing the tract from sale is a matter for rational administrative determination. See, for example, Clark Canyon Lumber Company, 9 IBLA 347 (1973), and the authorities there cited.

[2] With respect to appellant's request for a hearing, the only question before the Board under 43 CFR 4.415 is whether there is a sound basis for the judgment that was exercised. The appellant has alleged no facts to controvert the soundness of that judgment and consequently its request for a hearing is hereby denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Frederick Fishman  
Administrative Judge

